1890-038 Chancery Causes: M. D. Richmond vs V. H. Kelly & wife &c
Lee Co.

Morgan, Graham, Parrott, Newman, Ely, Barron, Pridemore,
Zion

CA-Debt
T-Property

To the Honorable John A Kelly Judge of the Circuit Court of Lee County Virginia

Humbly complaining your orator M. D. Richmond would respectfully show to your Honor, That on the 15th day of December 1882 he instituted his suit at law, (Action of debt) in the Circuit Court of Lee County, against one V A Kelly on a writing obligatory waiving the benefit of the Homestead exemption executed to him by the said V A Kelly on the 17th day of January 1876, That on said 15th day of December 1882, the day of the institution of said suit, he filed in the Clerks Office of the County Court of said County and had record ed in the proper deed book in said Office a notice of the pendency of his said suit the object thereof and the nature and amount of his said claim A copy of said "Lis pendens is herewith filed as part hereof marked (A) That at the March term 1883 of said Circuit Court Judgement was rendered in said suit against said Kelly for the sum of $1850.00 with interest thereon from the 17th day of January

1876 till paid and $731 costs subject to the follow
ing credits, to wit, $383 72 paid on the 6th day of
April 1876, which will fully appear by reference
and $45 44 paid on the 6th day of April 1876.
to said Judgement a copy of which is filed herewith
marked (B) That on this Judgement an execution
was issued and placed in the hands of Francis
Miles Deputy for T. S Ely Sheriff of Lee County for
collection and was returned by him "No proper
ty found, which fully appears by reference to an
abstract from the Execution book of said Circuit
Court here filed Marked (C) That said Judgement
was regularly docketed in the Judgement lien
docket in the office of the County Court Clerk of said
County on the day of 1883. so as to become
a lien upon the real estate of the said Kelly,
which will fully appear by reference to an abstract
from said Judgement lien docket here filed Marked
(D) Your Orator will now show your Honor that
the whole of said Judgement is still due and unpaid
Your orator will now further show your Honor
That at the time said Kelly contracted said

debt and executed said writing Obligatory he was the owner of valuable real and personal estate, That he then seemed to be an honorable man Truthful and Trustworthy, That he then claimed to be fully solvent and able to pay all debts which he might contract, That he was not at all encumbered with debt, your Orator will now show your Honor That at the Time said debt was contracted, from thence down to, and at the time of the institution of said suit and for sometime thereafter the said Kelly was the legal and equitable owner of the Dower of Mrs Sarah McNeil late widow of John Z Pennington decd which had been laid off and assigned to her out of the lands owned by the said Pennington at his death, for a more particular discription of which reference is here made to the deed of Wm T McNeil & Sarah his wife to the said Kelly a copy of which is here filed Marked (E) That he was the equitable owner of the remainder of said tract of land out of which said dower had been assigned, being the two Thirds Thereof not

embraced in or crossed by said down he having purchased the same from Alpha Pennington daughter and only heir at law of the said John Z Pennington to whom as your orator alleges most of the purchase price had been paid. For a full and particular discription of this tract of land reference is had to the deed of John Z Pennington from A copy of which is here filed Marked (F) The legal title to said tract of land is still vested in the said Alpha Pennington now Alpha Parrott, & D.C. Parrott her husband but she and her said husband are ready and willing to convey the same to the said Kelly as soon as the balance of the purchase money due on said land is fully paid. Your orator does not know what this balance is that is still due on said land but supposes from the best information that he is able to obtain that it amounts to about the sum of $800. But the said Kelly informed him about the time of the institution of this suit at law above referred to that he only owed to and said land about the

sum of $300. or $350. Your Orator believes and
has alleges that a large part of the proceeds of the
goods wares and Merchandise which the said Kelly
purchased from him and for which said debt was
contracted was taken by the said Kelly and applied
to the payment of the purchase price of said tract
of land. Your Orator will now show your Honor
that as soon as he instituted his said suit at law
against the said Kelly, that instead of making ar-
rangements to pay said debt, and met it like
a man of Honor he at once began to devise means
and institute plans by which to defeat its collection.
To this end, after the institution of said suit and
after the filing and recordation of said "Lis pendens"
aforesaid to wit on the 5th day of February, 1883.
He the said P. H. Kelly with intent to hinder delay
and defraud your Orator in the collection of his
said debt aforesaid, fraudulently colluded
with one Henry Graham father in law of the said
Kelly Henry J Morgan Trustee &c. & Others and
conveyed to them all the lands real estate and

interest therein owned by him in said County
To the said Henry Graham, he conveyed the
down in said lands which he had purchased
as before stated from Wm A McNeil & wife, which
will fully appear by reference to said deed a copy
of which is herefiled marked (G.) And on the
same day this conveyance was made by the said
Kelly to the said Graham, he the said Graham.
for and in consideration of the natural love and
affection which he bore to his daughter Eliza J
Kelly wife of V A Kelly conveyed said down in
terest in said land thus conveyed to him by V A Kelly
which by the terms of said conveyance was to be and
held occupied and enjoyed by the said Eliza J Kelly
free from any debt claim or demand due from
or by her said husband the said V A Kelly, all of
which fully appears reference to said deed a copy
of which is herefiled marked (H) Thus it will
be seen that on the same day by these two little
pieces of chicanery and collusion between the
said Graham V A Kelly and his wife it is attempted

to withdraw this subject from the reach of the said Kelly's Creditors (especially your orator) and transfer it to his wife to be held in her name and yet to be occupied used and enjoyed by him the said V.A. Kelly. thus defrauding your Orator & the other Creditors of said Kelly out of the value of said dower interest in said land.

Your orator will now your Honor that on the same day of the transactions above referred to the said V.A. Kelly conveyed to Henry J. Morgan Trustee the tract or parcel of land purchased by him from the said Alpha Pennington. now Alpha Parrott. The object of this Trust conveyance purports to be, to secure to certain parties therein mentioned the several debts therein specified all of which will fully and at large appear by reference to said Trust deed a copy of which is here filed Marked (I). Now your orator alleges that all these conveyances are fraudulent that they were made by the said V.A. Kelly for the purpose and with the intent to hinder delay and

defraud your orator in the collection of his debt and for no other purpose, That said conveyances nor neither one of them would have been made but for the institution of said suit by your orator. Your orator alleges that the institution, pendency, nature and object of his said suit was well known to the said Henry Graham Elija J Kelly Henry J Morgan Trustee and to several and perhaps all of the parties pretended to be secured by said fraudulent deed of trust at the time and before said conveyances were made; That it was well known to said Morgan Trustee the said Henry Graham and the other parties above referred to That a "lis pendens" had been duly recorded in the proper deed book of Lee County Virginia for the very specific purpose of creating a charge or lien on said Kellys lands. And he further alleges That the purpose and intent of the said Kelly to hinder delay and defraud your orator in the collection of his said debt was well known to the said Graham and the said Morgan

at the time of and before said conveyance to them, and that it was actually known to them that the whole object of the said Kelly in making said conveyance was to hinder delay and defeat your orator from collecting his just debt. and he further alleges that the said Eliza J Kelly had full and actual notice of said intent at the time and before she accepted the conveyance aforesaid from her father. Your orator further alleges that many, if not all, of the debts pretended to be secured in said deed of trust are fictitious false and fraudulent. That said Kelly does not owe them and that the parties to whom they are pretended to be secured have no right to collect them. Your orator alleges That the said W H Kelly does not now, and did not at the time of the execution of said Trust deed, owe to the said Henry Graham the sum or sums of money mentioned in said Trust deed or any of them, or any part thereof. The said Henry Graham is the father of the said Kellys wife He is a very old man, and has for several years

been dividing his property among his children, and giving it to them in the way of gifts or advancements. And that if said Kelly had got ~~from him~~ said sums of money or any of them from said Graham, That the said Graham gave them to him by way of an advancement or towards the share of the said Kelly and wife in said Grahams property at his death. That said sum & sums were never intended to be paid back or accounted for only in the nature of an advancement, That this idea of making a debt of them or treating them as such is only an after thought concocted and hatched up by the said Kelly and the said Graham for the purpose of facilitating their fraudulent design and giving color to a very transparent proceeding. Your orator alleges that the said Henry Graham has on many occasions been heard to say That he had divided and was dividing his property among his children. That he has frequently, and very lately at that, been

heard to say That, he had not yet given to the said Kelly and wife Their shares of his estate, That he had not advanced them as largely as he had his other children but That he intended to make them equal with the others, That he has been frequently heard to say That the six hundred dollar debt mentioned was given to the said Kelly, in the way of an advancement or as part of his estate, and the same is equally true with reference to the other debts alleged to be due from the said Kelly to the said Graham,

Your orator further alleges That the said Graham has been heard to say, and has frequently said within the last two years, That he had so divided his property among his children That he was now worth not more than $400.00 $800.00 or $600.00, Then how is it possible That $800.00 or a Thousand dollars could be due and owing to him from W H Kelly and he still be worth only from $400.00 to $600.00 and especially

when he has [redacted] of money amounting to $200 or $300 cash and all beside good horses cattle hogs and household and kitchen furniture of $200 or $600 in value in his possession [redacted] your orator [redacted] thru alleges. That said property embraced in said Trust deed is worth much more than the debts mentioned in said Trust deed even if each and every one of them was due and owing which he has again alleges is not the fact Your orator alleges That if said Trust deed was made in good faith and with the intention even of securing all the debts thereby provided for and at the same time enable the said Kelly to go on and pay the other debts due by him That an undue preference is given to the Creditors (even if their debts are just) attempted to be secured by the Trust deed because they are not such creditors as the law permits a parting debtor to give a preference to, and for this reason said Trust deed should be set aside and

held void although no actual fraud was intended. Your orator is advised that the Creditors of F H Kelly are all of a like class. That There is no peculiar reasons why a preference should be given to those pretended to be secured over himself and other Creditors of the said debtor That therefore whether intentionally fraudulent or not said deed has the effect of hindering and delaying him in the collection of his debt and therefore fraudulent, and void.

Your orator will here further show your Honor That the Wm H B Borrow pretended to be secured in said Trust deed is the son in law of the said Kelly a very young man and if he let his father in law borrow money or other Thing to the amount of the sum secured to him That he let him have it with full knowledge of said Kelly's indebtedness to your orator, and perhaps after the suit at law was instituted against him, but he charges That Kelly is not indebted to him. That said Kelly does not owe him one cent.

Your Orator further alleges That this sale of land by the said Kelly to his son James H Kelly and spoken of in said deed of Trust was made if ever made at all after the institution of his said suit and the recordation of his lis pendens of both of which he alleges the said James H Kelly had full and actual notice. This pretended sale your orator alleges was made to hinder delay and defraud your orator in the collection of his said debt. Now the object of this bill is to collect said Judgement of your Orator against the said V H Kelly and to subject to sale so much of the real estate owned by said Kelly either legally or equitably as may be necessary for that purpose and to that end to set aside the sale made or pretended to be made to the said James H Kelly to set aside and and declare void the deed made by V Kelly to Henry Graham the deed made by said Graham to Elijah Kelly and the Trust deed made to H J Morgan Trustee, and being without adequate

remedy at law, He prays your Honor to take cognizance of his cause and grant him the relief sought. To this end he prays that T H Kelly Elza J Kelly his wife. Henry Graham Henry J Morgan Trustee. J J Newman Mary Ely sole Legatee of Joseph N Ely A J Ely Wm A & Baron James M Zion A L Prudmore Elza S. Ely. Alpha Porrat & D G Parratt her husband. He makes the parties defendant to this bill that they each be required to answer its seven allegations on oath as certainly accurately and specifically as if each of said allegations was here again repeated by way of interrogatory, that each of the parties named or pretended to be named answer and say how much in what character and how much the said Kelly owes them when said debt was contracted and whether or not they had any, and if so what knowledge, that said Kelly was going to waste and squander or intended or pretended to squander this debt with which the said knowledge was obtained and

and whether or not they assented to it before said deed was made. That the said Henry Graham answer specifically and say in what sum the said Kelly was indebted to him what for how and when contracted if said sums of money were not given to the said Kelly for the benefit of his said wife by way of advancement and to one of his the said Grahams children and prospective heirs. That he answer and say whether or not, he was intended to collect said money from said Kelly if your orator had not instituted his suit against him and if he did not at the time said deed to him and the Trust deed to H.J. Morgan were executed have actual knowledge of the institution and pendency of said suit its object and the recording of said lis pendens and whether or not he did not know that the object of said Kelly in executing said deed to him and said Trust deed to Morgan was not to hinder delay and defraud your Orator in the collection of his said debt. That the said

Eliza J Kelly answer and say if she did not at the time and before the conveyance of said pretended interest in said land by her husband to her father and by her father to her, have actual notice of the institution and pendency of your orators suit against her husband its object and nature and whether said conveyances were not made and accepted for the express purpose of hindering and delaying your orator in the collection of his said debt, and she will further answer and say if there has been any actual change in the possession of said land since said conveyance, in other words is not her husband the said V H Kelly just as much in the possession of said land now as before the conveyance to her and is he not occupying using controlling and enjoying it now as before said conveyance, The said Henry J Morgan will answer and say if he did not have actual notice of the institution and pendency of said suit, its nature and objects at the time of and before

the execution of said Trust deed to him, was the same not executed for the express purpose of hindering delaying and defrauding your orator in the collection of said debt; he will further answer and state what disposition has been made of the Trust property, if any, and especially what has been done with the corn shoes hogs beds & bedclothing & 200 bushels of corn mentioned in said deed of Trust. And the said V. H. Kelly is especially required to answer and say if he did not make said conveyances aforesaid after he had full knowledge of the institution pendency and object of your orators suit. Whether or not he would have made said conveyances or either one of them if ~~he had not been~~ for the effort of your orator to collect his said debt and whether or not he did not make said conveyances for the purpose of withdrawing said lands and property from the operation of the lien which your orator would acquire

by reason of a Judgement in said suit against him. and Thus to hinder and delay your orator in the collection of his debt. He will also answer and say if the debts pretended to be owned to Henry Graham his father in law was ever money and other things given to him by way of advancements or towards his and his wifes share of his the said Grahams Estate as prospective heirs. whether or not he ever intended to pay. or whether the said Graham ever expected said money to be payed back to him, Has not he the said Kelly often said and even lately said so, that there was still something due to him and his wife to make them up equal to what he had given his other Children. He will also answer and say if he did not tell your orator and others in the town of Jonesville about the time of, and just before the institution of the suit by your orator against him That he owed no other debts of any sort or consequence now and except the

debt to your orator and the balance due on his land, and if he did not state said balance was only about $300. or $350-.

That upon a final hearing said deed of Elya J Kelly from Henry Graham, the deed of Henry Graham from V H Kelly and the deed of Trust executed by said Kelly to Henry J Morgan be set aside and held for naught, That the lien of your orators Judgement on said lands be enforced, That said lands be sold and after paying the balance due to Mrs Perrott towards the purchase price of said lands that the proceeds be applied or a sufficiency thereof to pay and satisfy your orators Judgement and for such other relief both general and special as is suited to his case. May Subpoena issue &c.

M D Richmond,

by Richmond Duncan & Orr.

M. D. Richmond

vs Bill in Chy

T. H. Kelly et al

1883 July Bill Filed & Spa
Executed & D. N.

" Aug. Decree Nisi Confd.

" Sept. Acts & Papers & Decree Confd.

1884 Jany. Filed & Hearth Case

" March Cause set for hearing

" Aug. Continued

" Nov. Aug. & Nov Cases Heard

1887, 1888, 1889 Cases Heard

" Mar. Order Passed & Confd.

" Sept Continued.

" Dec. Cause finally

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Virginia -

The seperate answer of Wm. T. G. Baron Jr. to a bill filed in this Hon. Court against him and others by M. D. Richmond - Respondent for answer states that he knows nothing of the many matters and things, stated by the plff, against his Co-defendant V. H. Kelly any further than to effect him -

V. H. Kelly is his father in law, and after he purchased the land from Parratt and wife was more or less embarrassed in making his payments at one time when Parratt called on him for some money, this respondent loaned said Kelly $30. 00 and at an other time he paid a debt to William Parsons for $97.50 cts $75; for Mrs Parratt at an other, and let him have from time to time various small sums, which with their interest at the date of the note secured by said trust, [illegible] amounted as therein stated to the sum of $306. 29 - every dollar of which was justly due your respondent at the date of said trust but since that time said Kelly has

paid him the sum of $43.60 - For a part of this note Jas Oates held a bond dated Sept 12 1881 for abat $96.00

Respondent denys that he ever colluded with said Kelly to hinder or delay the plff or to defraud him or any one else in the collection of their claim - He accepted the provisions of said trust because he saw it was the only means to make safe a debt, which had been, saved up from the earnings of hard labor, He denys any fraud in himself or knowledge of fraud in V. H. Kelly or any one else - He claims the benefit of said deed of trust to secure him in the recovery of his claim.

He denys that said debt is fraudulent or without consideration, but upon the contrary is just and fairly due this respondent - and he claims the full benefit of said trust. He denys each and every other allegation of the plffs bill, which in anyway affects his rights. And having thus fully answered he prays to be dismissed with his costs -

Morgan Bridewell

Sworn to before me Sept 1st 1883

J. A. G. Pratt
Clk

H.

Wm. N. G. Brown Jr

Adv. Answers

M. D. Richman

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Va

The demurrer and answer of James H. Kelly to a bill filed in this Hon. Court against him and others by M. D Richmond.

Respondent says the plffs bill is not good and sufficient in law and of this he prays judgment &c

But if any other or further answer be deemed necessary answering he says, that at the time, and even before his father had consummated the trade for the lands belonging to Mrs Pearl it was agreed between this respondent and his said father V. H. Kelly that if he did so purchase this respondent was to have about 40 or 50 acres of said land if he paid for it, the bermudiary was partly designated, and your ~~Complainant~~ respondent built upon it a house wherein he resided long before the plffs suit was instituted, and he continues so to reside therein - It was agreed that respondent was to pay of the purchase price so much as the said land was worth and when

fully paid and Parrott + wife were paid up, they were to convey so that this respondent could have his title in pursuance of this Contract and while remaining on the land improving it all the time he paid to said V. H. Kelly for to be paid on the purchase money due Parrott and wife at various times about the sum of $200. and since he built his house and moved upon it the boundary has been settled and estimated to be worth about $600 - He therefore owes for the boundary he thus holds and claims about the sum of $400 which he is willing to pay to whomsoever this Court may direct when a deed to him is made therefor -

Respondent therefore denys and fraud in himself to hinder delay or defraud the plff or any knowledge of fraud in V. H. Kelly to do so - He paid his money for the land, and respondent cannot see how the plff is prejudiced by the transaction for if he had not paid the $200 it would have been left standing against the land and the plff would have encumbered this same sum as a purchase money

lien - He is advised that his title is valid as against all persons except the purchase money lien and he does not care to whom he pays the price so he gets a good title to the land he purchased - He has paid and agreed to pay a fair full price therefor and asks that the money he now owes be applied to the discharge of the purchase money lien -

This is the only interest respondent feels in the matter - He has committed no fraud knows of no fraud in any one else. Claims the land so sold him and will cheerfully pay whatever may be due him to whomsoever this Court shall direct the same And having now fully answered he prays hence to be dismissed with his costs.

Morgan & Dickinson

James H. Kelly Made Oath before me that the Statements Made in the foregoing answer so far as Made on his own Knowledge are true, and so far as Made on information derived from others he believes them to be true

Henry J. Morgan Comr.

Sept. 3rd 1883.

James H. Kelly

Ads
Answer.

W. D. Richmond

To the Hon. John A. Kelly Judge
of the Circuit Court of Lee County Va

The demurrer and seperate answer
of Vincent H. Kelly, to a bill filed in
this Hon. Court against him and others
by M. D. Richmond.

Respondent says the plff's bill is not
good and sufficient in law, and of this
he prays Judgement of the Court &c.

But if any other or further
answer be deemed necessary answer-
ing he says- That respondent, owes
the plaintiff, the debt mentioned in
his bill; and it is the residue of a
running account with the plaintiff.

For several years this respondent
was a retail dealer in goods wears
and merchandise, in a Country store,
and for a portion of said time re-
spondent purchased his supplies from
the plaintiff, who was and is a
wholesale dealer- In the entire trade
carried on between the plff and this
respondent, respondent must have
purchased some $15.000. possibly
$20.000. worth of goods- For all which
he has paid except the plff's judge-
ment, and respondent believes himself

entitled to small credit upon that, but can not be certain. Upon this large amount of sales the plaintiff doubtless made considerable profits, as he of right properly might do. During his trade with the plff, respondent entertained high hopes of success and so believing, contracted for the lands mentioned in the plffs bill, and sought to be subjected. But in the course of a few years respondent found that strong competition, the hardness of the times, and perhaps from causes unknown to him, his trade was cut short and his profits greatly curtailed. He began to find himself hard run and pressed to meet his fast accruing obligations. Among others his land debt. Being thus pressed, he sought aid naturally from those nearest related to him and hoped by their aid to "pull through". Seeing that he could not pay for all of said land, he laid off, and pointed out a certain boundary of the Parratt-Wife land and contracted with his son James H. Kelly, that if he would pay its purchase price therefor, he should have the same conveyed to him

under and by virtue of this contract respondent, son went upon the said land, built a new dwelling house and moved upon it, long before the plff sued out his action at law.
James H. Kelly paid on the purchase money of said land the sum of $200. and still owes the balance which he was to pay on the out-standing purchase money. For the particulars of this transaction he refers to said James H. Kellys answer now on file in this cause. Not finding sufficient relief from this assistance he applied to his son-in-law Wm. T. Barrow, Jr. for aid and assistance, and gave him every assurance, that he would make him secure in what ever he could aid him under this promise respondent contracted the debt secured in said deed of trust as fully stated in said Barrows answer reference to which is here made, as the same appears on file in the papers of this cause - finding still, his debts greater than his resources, he sought the aid and endorsement of his father-in-law Henry Graham, and his brother-in-law James H. Graham, assuring them if only they would endorse for him, this respondent,

and aid him to procure ready money to meet his land debt then pressing him hardest that he would whatever might come secure them in such event against any loss, to the extent of whatever land or property he might have left,- and thus he contracted the debts secured in said deed of trust to Joseph & Jackson and A.J. Ely, which debts are bone fide due from this respondent,- The transactions between himself and his father in law Henry Graham are stated at length by him in his answer which this respondent has had carefully read to him, and adopts the same as his own so far as they relate to matters affecting this respondent- In all this respondent was straining every nerve to pay for said land down & all- And he paid into his debt therefor of the Jo. Ely debt secured by said trust & Henry Graham the sum of $100. of the A.J. Ely debt $125.00 of the sum A.J. Brown Jr. debt & money $200 or a little the sum $470. of the proceeds of his crops, lands & afterwards returned, as shown by Henry Graham answer to which reference is again had. $200. was so paid under the contract with James H. Kelly as above stated $82. was paid out of money borrowed from

(37) Henry Graham and is shown by said deed of trust being the identical debt therein secured. Thus it will be seen that of the purchase money already paid the sum of $1177. was raised from the debt secured by said trust= And respondent fails to see how the plff is injured thereby, if he had not thus procured the means to pay, the land would have been sold for the purchase money and plff no better off than he is; and it is not therefore true that the plffs goods or the proceeds of their sale paid for said land- By no means, but this respondent lost in the handling of said Goods a greater sum than the plffs debt including the cost of his support- Under these circumstances this respondent felt, that however just the plffs demands, the creditor whose money had paid for said land under his solemn assurance that they should be protected, had and held a higher obligation upon him than the plff, and it was this opinion then and now entertained that caused him to prefere them in said deed of trust to the plff; and respondent submits with confidence that to him they still do appear. To-Wit.

The plffs debt was incurred in the regular course of trade, and whatever loss occurs therein should be borne by him and not by creditors whose money actually paid for said land. This respondent regrets his in-ability to pay the plff and his failure to do so, will cast him a life of poverty and embarrassment, from which had he the means he would gladly fly.

But such is life, and his is not the only failure, by thousands, ensued in the hazardous trade in which he was engaged.

Respondent, therefore boldly and truthfully denys any fraud, or fraudulent intent, to hinder delay or defraud the plff or any one else - When the plff began his suit against respondent after learned of it and its amount, his creditors naturally became alarmed and besought this respondent, to secure them as he had previously promised; they were his sons, son-in-law, father in law and brother-in-law, and by their aid and assistance he had principally paid for said lands out of their means: This respondent regarded their debts and the money they stood security for, of a higher moral obligation on him than the plffs though no

more legally binding - and hence he then and now deemed it right and just to prefer them to the plff, and that and that only caused him to make and execute said deed of trust - nor can respondent see any just grounds for the plff, dark insinuations and open charges of fraud - Is not the debts secured just? Is not all respondents property enumerated in said deed of trust? Does it not all go to secure creditors? So far as this respondent is personally concerned it is matter of no consequence except to see justice done, In any event it is all gone from him, nor does he complain, he only regrets that there is not enough to pay all. The plff should not complain because after pay for the land if they had not, respondent could not and so by their act the plff is not in any wise injured - This respondent is advised, that the "Lis pendens" recorded by and so often mentioned in the plffs bill, is the first recorded instance, of the grave and learned proposition of law that a "lis pendens recorded in an action of debt between two citizens of the State" creates a legal lien upon real estate before Judgement" and indeed such a-

doctrine is only inferentially to be drawn from the plffs bill, since it no where so says, but carefully avoids such a statement, but repeatedly mentions the fact with all solemnity, instant saying what it was so done for! Respondent is advised that a knowledge of a pending suit does not operate to prevent an honest preference of creditors, but the question was such preference bona fide, and for the securing of bona fide creditors - If properly advised, that during a pending suit or suits a debtor has power and right to prefer, and does so prefer honest creditors one to an other, then this respondent rests his cause on that advice for that is what he did and all that he did in the execution of said trust - And if the plff can demonstrate that a "Lis pendens" can operate to prevent a preference of creditors, from a failing debtor, he will be entitled to the credit of having learned the lawyer one trick at least, - since the most expert of that wily class of mankind here heretofore failed to see the point.

Respondent in answer to the plffs

interrogatories would answer and say - That he did make said deed of trust after the institution of the plff's suit at law, and after the recording of his terrible Lis pendens, and therefore had knowledge of all legal consequences flowing from that great stroke of legal maneuvering - 2ⁿᵈ. He made said deed of trust, to secure by way of preference the bona fide debts of the several creditors therein embraced, and for that purpose alone; and not for the purpose to hinder delay, defraud or defeat the plff or any one else, - Yet this respondent well knew at the time that said preference, would if enforced, consume or nearly so the proceeds arising from the sale of said, and therefore that there would be little or nothing left for the plff - That was the effect of said conveyance; as it was the object to apply the sales of said lands to the debts, mentioned in said trust in preference to the plff - And respondent is advised that it is the right of an embarrassed and failing man, to prefer & secure one creditor or one class of creditors to an other; and exercising that power he did so, for the

reason before stated that it was his honest conviction that in morals and good conscience they the trust Executors had & held a higher obligation upon the respondent than did the plff.

4. As to Henry Grahams debts they were debts, and if said Graham ever intended to treat them as advancements, he had never so informed this respondent — He refers the plff to said Grahams answer upon this point as containing all the information respondent has upon that point.

5. This respondent did not say there was still something due him and his wife to make them equal, since the settlement made by said Graham, to equalize his said Children, before that time he may have so said; but never with reference to the debts mentioned in said deed of trust.

Respondent can not now remember the precise language used to the plff, before the institution of his suit about what he owed others, but he supposes he spoke hopefully of his Condition, and and held out to the plff the hope of his ultimate ability to

by him, such had been respondent, hope or desire until the reality of his condition was laid bare by the plffs suit -

He does remember however that he said to the plff that he had agreed to pay in the beginning $1500. and had paid all of the principal except $300 or $350: on the purchase of said land and that was not for principle but the interest had run to a larger amount than respondent supposed.

This respondent flatly denys each and every allegation of fraud, in the plffs bill, he has commited no fraud himself nor does he know of any in any one else, Each and every debt secured by said deed of trust is due to the parties therein named; and said deed of trust was made to secure them in preference to the plffs demand. That is all of it - that was the object sought to be accomplished and carried out - And unless this respondent is not answered properly, that he had the legal right to do, at any time before judgement, as the same was an honest and bonafide preference and on this he states his case - And having now answered he prays to be dismissed with his costs.

A. D. Pridemore

Virginia Lee County to wit.

I, V. H. Kelly do hereby certify, & solemly swear, that the facts stated in the foregoing answer, so far as they depend upon my own knowledge are true, and so far as they depend upon information derived from others I believe them to be true, Given under my hand this the 11th day of February 1884. V H Kelly

Sworn to before me in due form this the 11th day of Feby 1884. J. A. Hyatt Clk

P

V. H. Kelly

Adv Answer

W. D. Richmond

Filed Feby 11th 1884
J. A. Hyatt Clk

To the Hon. John A. Kelly Judge
of the Circuit Court of Lee be ca

The seperate Answer of Eliza J.
Kelly wife of V. H. Kelly to a bill
filed in this Hon. Court against her
and others. Respondent for answer
to said bill would respectfully state
that for several years her said hus-
band, has been merchandizing and
at different times more or less em-
barrassed and once before failed. These
facts made her some-what more careful
and watchful of her own estate derived
from her father than she perhaps other-
wise would have been. And so when
her said father and co-defendant, came
finally to make settlement of his affairs
and allot her, her proportion she requested
it to be so done that her said husband
V. H. Kelly could not without respond-
ents consent, charge the same with his
debts or the same be held liable for
his debts contracted in the course of trade.

For the manner and motive of her said
fathers settlement upon her, and how the
various matters of dealing between him & her
said husband was transacted she refers to
said Co-defendants answer for a full and

Correct detail thereof. Respondent would further state that, when requested to join in the deed of trust complained of by the plff she only agreed to do upon the promise of her father that he would as he did securely provide for her in his conveyance to her - Respondent with her husband sold her seperate estate in the land given her by her father, the Rusty plano house place, for $470 - $300 of this sum was paid her said father and constituted the consideration of $300 noted as a credit upon his six hundred dollar debt against her husband - Then as respondent is informed upon a full settlement of their several matters her said father conveyed to her, the lands mentioned in his deed of March 2nd 1883;

Respondent denys any fraud or fraudulent intent upon her part or that of her said father; but upon the contrary she claims the benefit of said deed -

Nor can respondent see how the plff's rights are affected by her indemnity - The land she owned could not have been subjected, and so far as it went it paid for the clover lands, so that it is not detrimental to the plff - Her debt was contracted in the due course of trade

his credit extended to her husband and not to her and she fails to see his higher equity. She denys that she had any knowledge, or information that said deed was made to hinder delay or defraud but upon the contrary it was a benefit transaction intended only for her benefit and not to injure an other. Respondent is advised it is not material for her to answer the many and oft repeated charges against her husband & father. These whole-sale allegations are easy made and hard to proove; but if the plff thinks he can better his fortune by this without a full knowledge of the facts imputing every one except himself in this transaction some evil motive she cannot prevent it. And having fully answer the plffs charges against her she prays hence to be dismiss with her costs.

H. J. Morgan & L Pridemore

Sworn to before me by Eliza J. Kelly at Genl. Pridemores office this the day it was so sworn to not ~~sworn~~ sworn to

Henry J. Morgan Comr

Eliza J. Kelly

ads

Answer

W. D. Richmond

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Va.

The Separate Answer of Henry J. Morgan to a Bill filed in this Honorable against him and others, by Marion D. Richmond.

For answer to said bill or so much thereof as he deems it material to answer, answering says he supposes it is true that about the time stated, the dft O.H. Kelly did convey to him the tract of land, and the personal property in the plaintiffs bill mentioned as trustee, and so far as respondent knows, the sole object of that conveyance was, to secure to the several persons therein named, the debts respectively due them as disclosed and set out in said trust deed.

It is also true that this respondent knew at the time said deed of trust was executed to him, that the actions at law referred to by the plaintiff in his bill was pending against his co defendent Kelly the grantor in said trust deed.

It is also true that this respondent knew at the time said deed of trust was executed to him by said Kelly, that in the plaintiffs said action at law then pending against Kelly. that the said plaintiff had filed therein his lis pendens and had caused the same to be recorded in the proper deed book of the county court of Lee County, And it is also true that O.H. Kelly. Henry Graham and James H Graham knew of the filing & recording of said lis pendens as well as the pendency of said action at law.

This respondent at the request of said Kelly wrote the said deed of trust referred to, and at his request consented to act as trustee therein, and this and nothing further, is the extent of his collusion with the said O.H. Kelly or others. And this being the extent of his connection with this transaction respondent denies that he either directly or indirectly colluded with said O.H. Kelly in order to enable him to hinder delay or defraud the plaintiff or any one else and he has done no act in the premises of which he has any knowledge which could possibly be construed as, or into, such collusion the plaintiffs allegation touching that matter is therefore wholly gratuitous and without any foundation on which to stand.

About a week or 10 days before said deed of Trust was executed Vincent H. Kelly or Jas. H. Graham came to respondents and asked his legal opinion as to whether or not said O.H. Kelly at that time, could make a valid deed of trust and by so doing prefer one creditor before another. And to this enquiry Respondent answered that it had been judicially

determined time and again that a failing debtor had the legal right if he saw proper so to do, to prefer one creditor or one class of creditors to another, provided the transaction was free from fraud, was fair, and the debts secured were justly due and owing to those so preferred.

It is true as before stated that respondent knew that in said action at law the plaintiff had filed therein and had recorded the lis pendens, And respondent thinks as now supposed that his object in so filing and having it recorded was that it might operate as a constructive notice to all of the pendency of the suit, and to create a lien on the real estate owned by said Kelly at the time and if he should attempt to convey the same to any one else or to encumber the same by mortgage deed of trust or otherwise, such his grantee, mortgagee or beneficiary, would take the same subject to the plaintiffs claim, But as to what effect said lis pendens is to have, it is not for this respondent to say, but the same must be determined by the Court.

This respondent did not know that the object of the deft. W.H. Kelly in the execution of said deed of trust, was to hinder delay and defraud the plaintiff in the collection of his debt. On the contrary respondent knew nothing about what the object was, and he had no means of knowing any thing about it except what the deft W.H. Kelly saw proper to disclose to him on that subject, and he made no such disclosure.

It is perhaps proper here to state, that this respondent heard nothing said about said deed of trust until after the plaintiff had instituted his said action at law against said Kelly and had filed and recorded his lis pendens

By way of response to the Special interrogatorys propounded to him by the plaintiff, Respondent says that at the time said deed of trust was executed to him, he did have actual notice of the pendency of said suit, its nature and object, But he did not, and does not know that said deed of trust was executed for the purpose of hindering delaying and defrauding the plaintiff out of his debt. or the collection thereof, this respondent does not know what has became of any of the property mentioned in said deed of trust, he does not know what has been done with the cow, Sheep, Hogs, Beds, Bed clothing and 200 bushels of Corn mentioned therein nor does he know whether or not said Kelly owned such property at the time or not. and respondent never saw it, And all he knows in relation to it is, that at the time said deed of trust was written said Kelly directed respondent to include these articles in said deed of trust, and the same was accordingly done

Respondent is not guilty of any fraud in the premises

And he does not know of any fraud being practised or contemplated by others touching any matter involved in this suit

This respondent has no interest whatever in this suit further than as a mere trustee holding the legal title to the real estate and property in the deed of trust mentioned for the benefit of others. and this being his condition he has no disposition or inclination to take any part personally in the controversy involved further than to disclose all he knows when called on by the plaintiff to do so.

Respondent has not in any way colluded with D.H. Kelly or any one else to enable him or them to evade the payment of any just debt he or they may owe but upon the contrary his course has always been to encourage and advise all persons to meet and pay their just obligations. And in this case he has had no motive whatever or any feeling or inclination to suggest ways or means or devise plans to enable another to deprive the plaintiff of one farthing

Respondent having now answered the plaintiffs bill as fully as deemed material he hereby denies each and every allegation therein affecting him not before denied or confessed and avoided. and he now prays that said bill be dismissed as to him

Henry J. Morgan

I do solemnly swear that the statements in the foregoing answer so far as made on my own knowledge are true, and so far as made on information derived from others I believe them true so help me god.

Henry J. Morgan

Sworn to before me by H.J. Morgan

this 26th day of March 1884.

D. A. L. Haydel Clk

Henry J. Morgan

Adv } Separate Answer

Marian D. Richmond

Filed March 26th 1884

J. Alex Hyatt

Clerk

To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Virginia

The Separate demurrer and Answer of Henry Graham to a bill exhibited in this Honorable court against him and others by Marion D. Richmond.

Respondent says that the plaintiffs bill is not sufficient in law for the plaintiff to have and maintain the same against him wherefore he prays the judgment of the court.

But if any other or further answer shall be required of him, Respondent answering says that he supposes it is true that the plaintiff about Dec. 1882 instituted his action at law against V. H. Kelly as stated by him in his bill. He supposes it is also true that about the time said suit was instituted the plaintiff filed in the clerks office of the county court of Lee county, and had them recorded in the proper deed book the lis pendens as stated by him in his bill, and that the same contained a notice of the pendency of said suit, the object thereof and the nature and amount of his said claim. He supposes it is also true that at the March Term of your Honors court for the year 1883. He obtained judgment in the action at law against said Kelly for the amount stated and subject to the credits as stated. He supposes it is also true that an execution was issued upon said judgment, and that the same was returned by the sheriff or his deputy, as stated in the bill. He supposes it is also true that said judgment was docketed on the judgment docketts in the county court clerks office. He supposes it is also true that said judgment from the first day of the term at which it was rendered operated as a lien upon any real estate or an interest therein which the said Kelly may have owned or had an interest in. But respondent is advised that said lien created by said judgment is subject to any lien created by said Kelly or acquired by others, prior to the first day of the term at which it was so rendered. Respondent admits that after said judgment was so docketed according to law it operated as a notice to all persons, and that all were bound to take notice thereof. Respondent supposes it is also true that there is a balance due the Pfff from said Kelly on said judgment, but as to what balance may be so due, respondent does not know.

This respondent does not now remember even if he knew at the time, what property real or personal was owned by his co-deft. Kelly, at the time the latter executed the note or bond to the Peff, which was the foundation of the action at law which resulted in said judgment, nor does he know how his co-deft Kelly appeared to the plaintiff at the time or since, whether as an honorable, or a dishonorable Man, whether truthful and trustworthy, or untruthful and untrustworthy, nor does respondent pretend to know how his co-defendant Kelly represented his financial and pecuniary condition to be at the time to the Peff, all that the Peff says on that subject may be true for aught respondent knows.

Respondent supposes it is true that V.H. Kelly purchased of Wm N. McNeil and wife the dower interest in the tract of land referred to by the Peff in his bill, and he supposes it is also true, that said Kelly purchased of Alpha Pennington now Alpha Parratt, wife of D.B. Parratt, the tract of land as stated by the Peff, but he does not now remember when those purchases were made, but he supposes that such interest as said Kelly had acquired by virtue of said purchases he owned at the time said action at law was instituted and for some time thereafter, with this exception, that is to say, said V.H. Kelly some time before said suit was instituted, had contracted bargained and sold, as respondent was informed and believed a part of the land he had purchased from Mrs Parratt, to his son James H. Kelly.

As to the amount of purchase Money yet due to said Parratt and wife this respondent knows nothing, but he has all the while understood, there was a balance still due them. And he has all the time understood said Parratt wife were ready and willing to convey the same by proper deed, whenever the purchase money therefor should be fully paid.

Respondent has all along been informed that his co-deft V.H. Kelly had paid a part of the purchase Money for the land purchased of Mrs Parratt, but as to how much, if any, so paid this respondent cannot state. Nor does he know what means said Kelly used in making any of the payments he may have made. Respondent does not know whether said V.H. Kelly used any of the goods wares and Merchandise sold by the Peff to him or the proceeds thereof, in making any of such payments, or whether he made such payments in live stock, or the proceeds of the sales of such, or otherwise.

This respondent is not aware of any means devised, or plans instituted by his co-deft Kelly, to evade the payment of the plaintiffs claim, if such were contemplated, or suit upon, but respondent knows nothing of it.

It is not true that this respondent colluded with said Kelly or others in order to enable the latter to fraudulently defeat the plaintiff in the collection of his judgment. This respondent is not guilty of any fraud in the premises either actual or constructive of which he is aware, nor does he know of any such having been committed or attempted to be committed by others; It is true that about the time stated by the plaintiff in his bill, the deft. Kelly ~~and wife~~ did convey to this respondent the dower lands purchased by said O.H. Kelly from Mc Neil ~~et ux~~, and it is also true that respondent about the same time, conveyed the same to Eliza J. Kelly, wife of said O.H. Kelly, and a daughter of respondent, and it is also true that the consideration moving him to make the said conveyance to his said Daughter, was natural love and affection, and this alone; It is likewise true that about the same time these conveyances were made as aforesaid, the said Kelly wife conveyed the tract of land purchased by said O.H. Kelly from Mrs Parrott to Henry J. Morgan as trustee, to secure the payment of the several debts therein mentioned; At the time O.H. Kelly conveyed said dower land to respondent as well as now, the said Kelly was largely indebted to respondent, and in consideration of said conveyance of said dower lands to him, this respondent gave said O.H. Kelly a credit of $300.00, on one of the notes or bonds owing by him to respondent, and in this way respondent paid said Kelly a fair and full price for the same, and but for this transaction, said O.H. Kelly would have owed this respondent said three hundred dollars in addition to what he now owes him, and which is secured by said trust deed, and had this transaction not taken place said $300.00 would have been included in said trust deed. so that on this score the plaintiff has no just grounds of complaint;

Said dower lands having become the property of respondent by a bona fide purchase, and for a valuable consideration paid as aforesaid, this respondent thought then as now, that he had a legal right to convey the same with, or without consideration to whomsoever he pleased, And with the view of securing his daughter a home, which could not be taken from her, to pay her husbands debts; and as a part of her proper share of respondents estate. he conveyed said dower lands to her for the consideration and in the manner stated by the Pltff

Respondent denies the plaintiffs charge that by this trans action it was attempted to withdraw said dower lands and place them beyond the reach of O.H. Kelly's creditors; on the contrary the same went to and were applied in payment of a debt justly due and owing to respondent from O.H. Kelly

Respondent having bought said dower lands for the express purpose of securing a home for his daughter, and having conveyed them to her as aforesaid it is not strange or unreasonable since he and her husband was then living upon said land, that the possession thereof should remain unchanged. Nor is it at all strange that O.H. Kelly should continue to occupy and enjoy along with his wife, said dower lands so conveyed to her.

Respondent denies that there was any fraud in the conveyance of said dower land to him, by O.H. Kelly or of his conveyance to said Eliza J. Kelly, nor of the deed of trust so far as respondent is concerned.

Respondent admits the fact that at the time said conveyance was made to him, he knew that the plaintiff had instituted his action at law against O.H. Kelly, or rather said heard said Kelly or others speak of it, and it is probable he may have heard some of the persons then present speak of the nature and object of said suit

It is also true that he heard some one or more of the persons then present, speak of the lis pendens referred to by the plff in his bill, and he may have heard the parties present or some one of them undertake to explain what object they supposed the plaintiff desired to obtain by the filing and recording of said lis pendens

Both respondent says then as now, that he was ignorant of the legal effect which said lis pendens was expected to have or of the effect which the law may attach thereto.

It is not true that this respondent knew at the time said deeds were executed, or before or since, that the object and purpose of said Kelly, in executing the same, was to hinder delay and defraud the plaintiff or any one else in the collection of their debts from said Kelly. Nor was it known to this respondent, that the whole object of said Kelly, in executing the same was to hinder delay and defeat the plaintiff in the collection of his just debt.

Respondent is not prepared to say to what extent

the plaintiffs allegation may be true or false when he says " that many if not all of the debts pretended to be secured in said deed of trust are fictitious false and fraudulent. that said Kelly does not owe them, and that the parties to whom they are pretended to be secured have no right to collect them." But respondent is prepared to say, and that is, that each and every debt, and every part thereof which is mentioned in said deed of trust as being due to him, is in fact, and in justice due to respondent from O.H. Kelly

Respondent did not know until about the time said trust deed was executed, that said Kelly contemplated or intended to so execute it, and when he learned the fact of such intention he neither approved or disapproved thereof, but left his co-deft Kelly, free to act as he pleased in the premises, and the execution thereof being a free and voluntary act of said Kelly so far as respondent is concerned, this respondent claims the full benefit of said deed of trust and he is ready at any time to produce full and satisfactory evidence of his demands against said O.H. Kelly.

It is true respondent is the father of the wife of O.H. Kelly, and it is true he is now advancing in years being now about 76 years old, and it is also true that from the time his children began to marry off and to start in life on their own hook, down to and including a part of the present year, he has from time to time been aiding them in the way of gifts of money and property as an advancement to them respectively, some two three or four years ago. this respondent gave to his seven living children to wit John P. Graham, the wife of James Pennington, the wife of Edward Pennington, the wife of Robert Mauney, the wife of O.H. Kelly, M.K. Graham and James H. Graham what is known in the neighborhood as his Buck farm, all of whom sold out their interest therein to said James H. Graham and in this way each of them received of respondent in the way of an advancement about the sum of $315.00 And about the same time, respondent also gave to the same parties his home farm on which he now lives, but in this gift he reserved a life estate therein, and his wife retained her dower therein, but by this gift he advanced to each of his said children about the sum of $200.00, and it is perhaps proper here to state,

that while these gifts were made several years ago. the deeds of conveyance by which they were finally consummated were not executed and completed until the Spring of 1883. During several years last past, respondent had been loaning to his Sons, and to the husbands of his daughters various sums of money to aid them in the struggles of life and taking their notes for the return of the money until these loans amounted in the aggregate to purchases $2000.00 or more, and about the spring of 1883 respondent concluded to let these loans go as an advancement to his children and he accordingly surrendered to them their notes so far as he had taken the same, and in this way respondent advanced to his three Sons, and three of his daughters and their husbands something more, or purchases given $340.00 each as an average some of them a little more and others a little less. the precise amount in each case not remembered. The said V.H. Kelly having borrowed money of respondent as the others had done, but to a much larger amount and had given his notes therefor for the same, in order to make Kelly and wife about equal to the others as to this last division of respondents property and with the view to secure them a home, purchased of said V.H. Kelly said Dower lands at the price of $300. and credited his bond therewith, and then conveyed said dower lands to Eliza J. Kelly as a gift and an advancement. about the time his several children married off and commenced the business of life for themselves respondent gave each of them quite liberally for a man of his limited means, in addition to the gifts and advancements already referred to. but he cannot now state the amount given in this way to any of them but the same could no doubt amount to a considerable sum

The plaintiffs charge in his bill "that if V.H. Kelly got of Respondent the several sums secured to him by said deed of trust or any of them that respondent had given them to him and his wife by way of an Advancement" is not true, and is without the least foundation on which to stand, Neither is it true that respondent did not intend to collect said debts when he loaned said Kelly the money for which his notes were executed, Nor yet is it true that said sums of money were never intended to be paid back or to be accounted for in any other way than as an advancement

This respondent loaned said Kelly money at various times, and sold him stock at cash rates, and at the time of loaning him the money and selling him the stock respondent took his notes for the same, just as he did with other persons, and he made no other calculation but to be paid, and he still expects at some time to

collect the sums, and respondent here alleges that the notes and claims now under consideration do not embrace one cents or one farthing of any thing ever given or pretended to be given as an advancement to said Kelly and wife by this respondent. Respondent further says that he has given said Kelly and wife about the same sum that he has given his other children, and that no part thereof is included in the notes owned by said trust deed.

It is perhaps true that respondent has been heard to say on several occasions that he had deeded and was dividing his estate and property among his children, and if he has not been heard so to speak, he now says such is the fact.

Respondent does not now recollect of lately, or any time saying, that he had not yet given to the said Kelly and wife their share of his estate, that he had not advanced them as largely as he had his other children, but that he intended to make them equal with the others, Respondent does not recollect of using any such language, nor does he believe he did, for as before stated, respondent has given them about the same sum as the others, and to have so talked would have been contrary to the true state of their advancements; respondent has not kept an exact account of these advancements so as to be able to state precisely how they stand one with another, last his object and desire was, to make them equal and he thinks they are substantially so.: *

Respondent says that no one has ever heard him say, that the Six hundred dollar debt owing by Kelly to him was given to Kelly as an advancement, or as a part of respondents estate; nor did he ever say that either or any part of the other debts were so given to him;

Respondent has never said to any body or on any occasion, or at any time, that he had so divided his property with his children, as that he was then worth not more than $1400 - $500 - or $600 - for there has been no time within the last thirty years when respondent was not worth in property, more than one thousand dollars, and he is now worth one thousand dollars in property.

That respondent within the last two years has been heard to say that he had been dividing his property among his children, he does not pretend to doubt or deny for he could say this far truthfully, but to have used the language attributed to him would have been untrue and since he did not use it.

* If it is possible however if not possible, that prior to respondents conveying said down lands to Mrs Kelly, that he may have said that he had not given her and her husband as much as the others because such was the fact, and to make her equal and to assure her a home was the object of said conveyance

As to the interogatories propounded by the plaintiff in the prayer of his bill to this respondent. he has already directly or substantially answered them, but he will again do so:

In the first place his co-defendent Kelly is indebted to him in the sum of $600.00 with legal interest thereon from the 13th day of April 1874 till paid, subject to a credit of $300.00 paid March the 2nd. 1883, as shown by said Kellys bond hereunto filed marked (A) as part of this answer.

In the second place said Kelly is indebted to respondent in the sum of $112.00 with legal interest thereon from the 5th day of February 1877. till paid which is shown by bond hereunto filed as a further part of this answer marked (B) *

In the third place said Kelly is indebted to respondent in the sum of $35.00 as is shown in an account hereunto filed as a further part of this answer marked (C) *

Respondent states that some years ago said O.H. Kelly and James H. Graham were partners in the mercantile business, and during the time they were such partners, respondent loaned them money and sold them property until they were jointly indebted to him in the sum of $1200.00

After the dissolution of that partnership, said two parties came to respondent and desired him to take from each of them a seperate and an individual note for one half of said $1200.- And one of them being a Jew, and the other a son in law respondent consented so to do, and said $600.- note was executed for said Kelly's half of said partnership debt. and respondent pursued this course, because he did not desire either of them to be encumbered with a liability of the other.

The said $112.00 note was given by said Kelly to respondent for money loaned.

The said account upon its face shows upon what account and for what items said Kelly is indebted to respondent.

Respondent says that no part of either of said sums of money were ever given said Kelly as a gift or advancement or as any part of his or his wifes, share or prospective share in respondents estate

At the time respondent made these debts with said Kelly and at all times since respondent has intended to collect said debts from him, and has all the time so intended, whether the plaintiff had brought his suit or not.

* Refer to the fourth folio said Kelly is indebted to respondent in the further sum of $81.21 with legal interest thereon from the 1st day of Jan 1882 this sum as shown by his bond hereunto filed marked (D) this note was executed for money loaned at the time said note bears date.

It is true that at the time said Kelly conveyed the said dower lands to respondent and at the time he & his wife executed the trust deed to Morgan this respondent did have a knowledge such as he has before described of the pendency of the Plaintiffs action at law its object and of said lis pendens

But respondent did not know as before stated that the object of said Kelly in executing said deed of trust and the deed conveying said dower lands to respondent was to hinder delay and defraud the Plff in collecting his debt.

Respondent is advised that the lis pendens so often referred to by the plaintiff in his bill might in a proper suit under such a state of case as the statute contemplates have some binding and conclusive force, but in the suit in which it was filed, and under the facts and circumstances under which it was filed and recorded, Respondent is advised it had no force or binding effect whatever.

Respondent having now answered the plaintiffs bill so far as he is advised it is material to answer the same, he hereby denies each and every allegation therein affecting him, not hereinfore denied or confessed and avoided and he prays that the Plaintiffs bill be dismissed and respondent decreed his costs.

Pridemore & Morgan

I do solemly swear that the statements set out in said answer so far as made on my own knowledge are true, and so so far as made upon information derived from others I believe them true so help me God.

Henry Graham

Sworn to before me by Henry Graham the 21st day of January 1884

Henry J. Morgan Com.

Henry Graham

Ads. } Answer

Marion D. Richmond

M. D. Richmond / Pltff

vs. } In Chancery

J. H. Kelly et al. Defts.

This cause came on this day to be heard upon the bill of the complainant and exhibits thereto with the answer of the defendants and exhibits thereto and was argued by counsel, and it being stated in open court that the judgment vested by said M. D. Richmond, had been compromised and that said "Richmond's Admr. had agreed to accept the sum of $1000. in full settlement of said judgment which sum has been fully paid

It is therefore adjudged ordered and decreed that said cause be dismissed each party paying his own costs.

M. D. Richmond

vs. Z. Deering final

T. H. Scully et al

Ents page 306

Co Book # 3

Jos. Heath Dc

Enter this decree

H. J. K. M.

Decree

M. D Richmond Pltff

vs

In chcy

T H. Kelly et als. Dfts.

It being suggested That the plaintiff in This cause has died since the last Term of This Court and That A. C. Joslyn has been appointed his Administrator. on his motion and by his consent This cause is revived and will hereafter be prosecuted in his name as Administrator of the estate of the said M. D. Richmond deceased and said cause is continued.

M. D. Richmond

26 ½ Decree

J. A. Kirby et als

Reversal in the name of his Admr

Entered Chy. O. B. page 258. April 2nd 1890. I. & L. Hyatt C.

Enter This decree April 2 1890

W. A. [illegible]

W. D. Richmond
vs.
V. H. Kelley et al
} In Chancery.

Upon motion of J. H. Graham, Ex'r of Henry Graham, dec'd, privilege is given him to withdraw the notes filed in this Cause marked "A" "B." & "D" by the said Henry Graham and leaving certified Copies of the Same in the records.

W. D. Richmond
vs. } Order.
V. H. Kelley et al

E. C. D. B. Page 561
March 9th 1894

Exeter Feb. March 9
, 1894.

Virginia

At a Circuit Court contd and held for Lee County at the Court House thereof the 7th day of April 1883.

M. D. Richmond Pltff
vs
V. H. Kelly Deft } In debt

The defendant not appearing it is Considered, that the Judgment obtained in the Clerk's Office against him for $1850.32 the debt in the declaration mentioned, with legal interest thereon from the 17th day of January 1876 till paid and the costs be made final, subject to a credit of $383.72 April 6th 1876 and $457.94 April 10th 1877.

A Copy Teste.

J. A. Hyatt
Clerk

M. D. Richmond
vs
V. N. Kelly

Copy of Judgt.

(B.)

Fee for copy - - 20¢

1883 Apr 11	R.O.&C.	M.D. Richmond against V. A. Kelly March Term 1883 O.B. 411	F. Miles	Judgment for $1850.32 with legal interest thereon from the 17th day of February 1876, till paid and the costs $4.31, $3.50, $25.00 $6.25 subject to a credit of $383.72 paid April 6th 1876, and $454.94 paid April 10th 1877.	Fi Fa	No property found F. Miles D.S.	June Rules 1883

I, J. A. Hyatt clerk Lee circuit court, do hereby certify that the above is a true transcript from the Execution book of my Court. June 21st 1883.

J. A. Hyatt
Clerk

M. D. Richmond
vs
Copy of Fi. Fa. &
Return thereon
V. H. Kelly.

(6)

Fee for Copy - - - 20¢

This deed made this 5th day of February 1883. between O H. Kelly and Eliza J. Kelly his wife of the first part and Henry J. Morgan Trustee of the other part. all of the county of Lee State of Virginia: Witnesseth that the said O H. Kelly being justly indebted to the following persons that is To D.C. Parratt in the Sum of some Six or Eight hundred dollars the exact Sum not known the balance of the purchase money due him for the land herein after described. To J.J Newman in the Sum of $100. with interest, and subject to a credit of $50.00 and for the payment of which Henry Graham Sr. is surety. To the estate of Joseph N. Ely dec'd. in the Sum of $209.93 due January 27th 1882 and for the payment of which said Henry Graham Sr. and Jas H. Graham are Surety. To the said Joseph N. Ely estate in the further Sum of about $114.00 with interest, and for the payment of which said Henry Graham Sr. is surety. To Andrew J. Ely in about the sum of $125.00 due some time in 1881 and for which said Henry Graham Sr. is surety. and subject to some small credits, To Wm N.G. Barron in about the sum of $303.00 due in Nov. 1882 subject to a credit of about $15.00. To James M Zion in the Sum of $45.00 due sometime in the Spring of 1882. To A.S. Baldwin in the sum of $25.00 due some two or three years ago. To Henry Graham Sr. in the Sum of $600.00 with interest from April 13th 1874. subject to a credit of $300.0 paid March 2 1883. To the same party in the Sum of $112.00 due January 1st 1878. To same party in the further sum of $81.21 due January 1st 1882 and to the same party in about the sum of $30.00 for an open account due in the Spring of 1882. And also to Eliza I. Ely in the sum of $50.48 due by note this day executed. And To Marion K. Graham in the sum of $[illegible] due in the year 1884

And the said O H. Kelly and wife being willing and desirous

to Secure to the said Several persons the said Several Sums due them respectively, and in consideration thereof and of One dollar to them in hand paid by the said Morgan the said D.H. Kelly and wife do by these presents give grant bargain sell deliver and convey unto said Morgan all their interest right and title in and to ~~a certain tract or parcel of land lying and being in said county of Lee~~ a certain tract or parcel of land lying and being in said county of Lee on the North fork of Powells river where said Kelly & wife now live, the same being ~~the lower interest which said D.H. Kelly purchased from Mrs. M. McNeil wife and~~ two thirds of the tract of land owned by John T. Pennington in his lifetime and purchased by said Kelly from D.C. Parratt and wife as the heir at law of said Pennington and this ~~said~~ interest being purchased by said D.H. Kelly from Mrs. N. McNeil wife that part of said land not owned by the dower. And for the purposes aforesaid the said D.H. Kelly doth convey to said Morgan the following personal property to wit ~~one yoke oxen~~ One cow, 14 head of sheep, 200 bushels of corn, two Beds and clothing, & 7 head of hogs. To have and to hold said real and personal estate hereby conveyed with all the appurtenances unto the said Morgan his heirs forever and the said Kelly that he will warrant generally the title to the hereby warrants the real and personal estate hereby conveyed. In Trust nevertheless. If said D.H. Kelly shall shall pay or cause to be paid to the several parties herein named the sum or sums due them respectively with such interest as may be due thereon together with the expense of drawing and recording this indenture on or before the 1st day of January 1884, then this conveyance to be void, but if default be made in the payment of of either or any one of said claims or any part thereof or of drawing and recording this deed, then it shall

be lawful for said Morgan to proceed to sell said land and property for cash in hand at the court house door of Lee county on some court day. after having advertised the time terms and place of sale for 20 days prior thereto by posting an advertisement for that purpose at the court house door for that space of time, and out of the proceeds of such sale said Morgan will pay said debts or such of them as may not then be paid and the residue he will pay to said Kelly

But said V.H. Kelly doth hereby expressly reserve to themselves and from the operation of the foregoing conveyance about 35 or 40 acres out of the said land, which they have heretofore sold to their son James H. Kelly and on which he now lives and lying on the east side of said tract. And as the said Jas H. Kelly is to get owing for said 35 or 40 acres of land about $400.00 hereby reserved. The said V.H. Kelly hereby assigns and transfers said purchase money claim to said Morgan as trustee to be collected and applied to the payment of the debts herein accrued.

Witness the following signatures and seals

V.H. Kelly (seal)

Eliza P. Kelly (seal)

Virginia Lee County to-wit:

I Harry J. Morgan a commissioner in Chancery of the circuit Court of Lee county the same being a court of record, do certify that Vincent H. Kelly and Eliza J. Kelly his wife whose names are signed to the foregoing deed bearing date Feb. the 5 1883 each personally appeared before me in the county aforesaid (~~the said V.H. Kelly on the 5th and the said Eliza J. Kelly on the~~ Feb. 1883)

and acknowledged the said writing to be their joint act and deed. And Eliza J. Kelly wife of the said Vincent H. Kelly being examined by me privily and apart from her said husband and having the deed aforesaid fully explained to her declared that she had willingly signed and executed the same and did not wish to retract it Given under my hand this 2nd day of March 1883.

Henry J. Morgan Comr.

Virginia Lee County Court Clerk's office the 2nd day of March 1883
The foregoing deed of trust bearing date Feby 5th 1883 between V. H. Kelly & Eliza J. his wife of the first part and Henry J. Morgan Trustee of the second part all of Lee Co, Va, was this day admitted to record upon the certificate of H. J. Morgan a commissioner in chancery for the circuit court of Lee county Virginia.

Test John R. Gibson Clerk

Recorded in Deed Book No 20 p. 161-2
Test John R. Gibson Clerk

$2.50
1.25
3.75

Henry J. Morgan Trustee
From
Deed Trust
V. H. Kelly et ux

Feby 5th 1883

$ 600.00 One day after date I promise to pay Henry Graham Jr. Six Hundred Dollars for value received. Witness my hand and seal. This Apr. 13th 1874.

A copy Teste A B Murray Clerk V. H. Kelly (Seal.)

1883 March 2 Credit the within Note by $300.00 the price paid by me to W. H. Kelly for the dower interest this day conveyed by him to me.

$81.21

By the 1st day of Jan. 1882
I promise to pay Henry Graham
Eighty One Dollars and Twenty One
cents, for value received of him
waiving the homestead act as to this
debt, witness my hand and seal,
This Dec. 31, 1881.

V H. Kelly (Seal)

A Copy Teste A. B Munsey clerk

$112.00 By the first of Jan. next I promise to pay Henry Graham Jr. One Hundred and Twelve Dollars, for value recd. Witness my hand and seal. This Feby 5th 1877.

V A Kelly (Seal)

A Copy Teste A B Munsey Clerk

THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting:

We Command You to Summon V. H. Kelly & Eliza J. Kelly wife of the said V. H. Kelly, Henry J. Morgan Trustee, Henry Graham Sr. Alpha Parrott & D. C. Parrott her husband J. J. Newman, A. J. Ely, Wm. N. G. Barrow Jr. A. L. Pridemore, Eliza J. Ely, James H. Kelly, James M. Zion & Sarah S. Ely legatee of Joseph Ely dec'd

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in July next being rule day to answer a bill in Chancery exhibited in our said Court against them by M. D. Richmond

And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This 22nd day of June 1883, in the 107 year of the Commonwealth.

A Copy Teste- J. A. G. Hyatt clk

J. A. G. Hyatt Clerk

Ely R.D.&Co

M. D. Richmond

vs Deft in Chy

V. N. Kelly et al

To July Rules 1883.

Executed by delivering
Copies of the within to
L. C. Parrott and
Alpha Parrott
June 30th 1883.

Tho. J. Ely S.C.C.

Chd (79)

THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting:

We Command You to Summon V. A. Kelly & Eliza J. Kelly wife of the said V. A. Kelly, Henry J. Morgan Trustee, Henry Graham Sr. Alpha Parrott & D. C. Parrott her husband, J. J. Newman, A. J. Ely, Wm N. G. Barrow Jr. A. L. Pridemore, Eliza J. Ely, James A. Kelly, James M. Zion & Sarah S. Ely legatees of Joseph Ely dec'd,

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in July next being rule day to answer a bill in Chancery exhibited in our said Court against them by M. D. Richmond

And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This 22nd day of June 1883, in the 107 year of the Commonwealth.

J. A. G. Hyatt Clerk.

Miles (R.D.& Orr

M. D. Richmond
vs
Spa in Chy
V. H. Kelly et al

To July Rules 1883

Executed by delivering copies of the within to the parties this June 24/83)
H Miles D.S for U.S. Ely
S.F.C.

Rehd 79